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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 17th April 2012

No. 2999—li-1(B)-49/2000(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th July 2011 in I. D. Case No. 230 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Parel Investment & Trading Co. Ltd. H.P.C. Ltd., Cuttack and its workman Shri Dhir Moharana represented through the General Secretary, Cuttack New Malgodown Mazdoor Union was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 230 OF 2008

(Previously registered as I.D. Case No. 117 of 2000 in the file of the Presiding Officer, Labour Court, Bhubaneswar)

The 26th July 2011

Present :

Shri Raghbir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of M/s Parel Investment .. First Party—Management
and Trading Co. Ltd., Cuttack.

And

Shri Dhir Moharana, represented through .. Second Party—Workman
Cuttack New Malgodown Mazdoor Union,
Sikharpur, Cuttack.

Appearances :

Shri B. C. Bastia, Advocate	.. For the First Party—Management
Shri T. Lenka, Authorised Representative.	.. For the Second Party—Workman

AWARD

This is a reference of an industrial dispute made by the Government of Odisha in the Labour & Employment Department vide their Order No. 10969-L.E., Dt. 17-8-2000 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li-21-32/2007-LE., Dt. 4-4-2008. The Schedule of reference runs as follows :

“Whether the termination of the services of Shri Dhir Moharana, Security Guard, LPG Plant, Sikharpur, Cuttack by the Management of Parel Investment and Trading Co. Ltd., Custodian, Hindustan Petroleum Corporation Ltd., Kirlamoudi Layout, Visakhapatnam-530023/Sikharpur, Cuttack with effect from the 24th April 1996 is legal and/or justified ? If not, to what relief Shri Moharana is entitled ?”

2. It is not in dispute that M/s Parel Investment & Trading Co. Ltd., the first party, is a registered Company and the Government of India vide Act No. 29 of 1979 has taken over the management of the said Company and vested it with M/s Hindustan Petroleum Corporation Ltd. The said Company was having its LPG Plants in the States of Andhra Pradesh, Odisha and Madhya Pradesh. It is also not disputed that the Government of India vide Notification No. 457 (E), Dt. 21-6-1984 has declared Petroleum Industry as “Controlled Industry” for the purpose of the Industrial Disputes Act, 1947 (for short, ‘the Act’). Though the period of the said Notification was for two years, the period is being extended from time to time in every two years and it is in vogue even today. It is also not disputed that the above named Company had its LPG Plant at Sikharpur, Cuttack and the second party was working there as a Security Guard.

3. The second party in his claim statement has taken the stand that he had joined in the establishment of the first party in 1991 as a Security Guard and was performing his duty as such in the first party’s LPG Filling Plant at Sikharpur. Like him there were other Security Guards who were also performing their duties in the said Plant. All the Security Guards were working as per the direction of the Plant Manager as well as the Supervisor. The second party had been working in the Plant continuously without even availing any off days. But, all on a sudden on 24-4-1996 the first party denied employment to the second party as well as all other Security Guards. The Security Guards were not paid their wages for the months of March and April, 1996. There was neither any notice nor payment of notice pay as well as compensation. Therefore, the denial of employment is illegal and the workman is entitled to be reinstated in service with full back wages.

4. In the written statement the first party has contended that the management wanted to engage a Security Contractor to supply Security Guards to be deployed in its Plant at Sikharpur. Mr. Kishore Mohan Prida, a Security Contractor, was assigned with the contract. The second party was one of the Security Guards employed by the said Contractor. There was no employer-employee relationship between the parties. The first party had no control or supervision over the security Guards employed through the Contractor. The Contractor having died on 12-4-1996 the contract for providing security personnel automatically came to an end. Accordingly, a notice was issued by the first party to that effect stating therein that the persons appointed by the Contractor need not report for duty.

Further contention raised by the first party is that the reference is not maintainable in as much as the appropriate Government in respect of the industry run by the first party is the Central Government whereas the reference has been made by the State Government.

5. Basing on the pleadings of the parties, the following issues have been settled :—

ISSUES

- (i) Whether the termination of the services of Shri Dhir Moharana, Security Guard, LPG Plant, Sikharpur, Cuttack by the management of M/s Parel Investment and Trading Co. Ltd., Custodian, Hindustan Petroleum Corporation Ltd., Kirlamoudi Layout, Visskhapatnam-530023/Sikharpur, Cuttack with effect from the 24th April 1996 is legal and/or justified ?
- (ii) If not, to what relief Shri Moharana is entitled ?
- (iii) Whether the reference is maintainable ?
- (iv) Whether the second party was a contract labourer and there was no employer-employee relationship between the first party and the second party ?

6. In this case the second party has examined himself as W.W. No.1 and the first party has examined a Senior Officer (HR) of H.P.C.L. as M.W. 1. Exts. 1 to 4 have been marked on behalf of the second party and Exts. A to J have been marked on behalf of the first party.

FINDINGS

7. *Issue No. (iii)*—According to the first party, the Central Government is the appropriate Government in case of LPG Industries for the purpose of industrial disputes. But, it is contended by the second party that the activities carried on in an LPG Filling Plant is not covered by the Notification which specifies LPG industry as a ‘controlled industry’ under Section 2(a) of the Act. In this regard the letter issued by the Ministry of Labour, Government of India, marked Ext. C, may be referred to. Para. 2 of the said letter runs as follows :

“A question has now arisen whether the liquefied Petroleum Gas would be covered by the above notifications. The matter has been examined in this Ministry in consultation with the Ministries of Law, Industry and Petroleum and it is clarified that activities connected with the production or manufacture of LPG are covered by the above said notifications. In other words, the Central Government would now be the appropriate Government in respect of an industrial dispute concerning manufacture or production of LPG Industry.”

Thus, the Central Government has clarified that the activities connected with the production or manufacture of LPG are covered by the expression “controlled industry”. No doubt, the management has not adduced evidence as to what activities are undertaken in an LPG Filling Plant to establish that such activities are connected with the production or manufacture of LPG. But, it is argued that the activities undertaken in the Filling Plant are part of the activities connected with the production or manufacture of LPG. On the other hand, the representative of the second party submits that the

LPG stored in the plant are simply re-filled in Cylinders and distributed to different Agencies to be marketed and that activity cannot be connected with the production or manufacture of LPG. In this regard, the enclosure to Ext. 4 which has been exhibited on behalf of the workman may be referred to. This enclosure is a letter, Dt. 31-10-1990 issued by the Ministry of Labour, Government of India containing clarification as to whether the Central Government or the State Government would be the appropriate Government in respect of the Oil Storage Depots of the Marketing Divisions of the BPCL and HPCL. In this letter it is clarified that the activities in the Oil Storage Depots of the Marketing Divisions of BPCL and HPCL can be deemed to be adjuncts to the process of manufacture or production of mineral oils, etc. and as such the Central Government is the appropriate Government in any industrial dispute pertaining to the Oil Storage Depots. It is further clarified that only when the product is actually marketed the State Government will acquire jurisdiction under the Act. Similar clarification on the Storage Depots of LPG is not forthcoming. But, what is explained in the aforesaid letter in respect of Oil Storage Depots can also be applied to LPG Storage Plants and the activities that take place in the LPG Storage Plants are to be deemed to be adjuncts to the process of manufacture or production of LPG. Therefore, in my considered view, the Central Government is the appropriate Government under the Act in respect of the industrial dispute which has been referred to by the State Government.

This issue is answered accordingly in favour of the management and it is held that the reference is not maintainable.

8. Issue No. (iv)—According to the second party, the Security Guards who were engaged in the LPG Filling Plant were all directly employed by the first party. But, the first party denies this assertion and takes the stand that they were all engaged through a contractor. The second party has not exhibited any document like appointment order, interview call letter, pay slips, etc. showing that he was directly employed by the first party. On the other hand, the first party has exhibited a document marked Ext. J which contains the terms and conditions of engaging one Kishore Mohan Parida, Security Contractor to provide adequate security force for the LPG Filling Plant. This is a kind of an agreement between the management and the Security Contractor which was signed on 31-7-1986. According to the first party, the said Security Contractor had engaged the second party to work as a Security Guard at the Plant site. Though it is claimed by the second party that Kishore Mohan Parida was, in fact not the Security Contractor but one of the Security Guards employed by the first party, there is no supporting evidence to that effect. The second party did not call upon the first party by making a prayer to the Tribunal to produce documents in the custody of the first party which could have shown the employer-employee relationship between the parties. It is argued by the representative of the second party that the management has not proved that it had made an advertisement inviting the intending Firms to supply security force, that it is not shown that the so-called Security Contractor had a licence to that effect, that the first party has not proved that the bills submitted by the Contractor were paid to the Contractor and the Contractor in turn had actually disbursed wages to the Security Guards and that there is no material showing that prior to the introduction of Kishore Mohan Parida if there was any other Contractor to provide security force. But, the second party cannot take advantage of the weakness in the evidence of the first party. It is the second party who has to *prima facie* show that he was directly employed by the first party. The first party is a Public Sector Undertaking. It has got its own Rules and Regulations in the matter of appointment of its regular staff. The workman has neither pleaded nor proved that he was appointed by the first party in accordance with such Rules.

9. It is further argued that in his evidence M.W. No. 1 admits that the management used to supervise the work of the Security Guards, deploy them in duty and allot shift duties. It is also argued that 'watch & ward' is a perennial requirement of the Filling Plant. It is also argued that actually there was no contractor in the name of Kishore Mohan Parida and the very contract system was a camouflage. All these arguments are not tenable in the present reference. It is not the case of the workman that the very contract system was a camouflage and though there was a contract system but as a matter of fact the Security Guards including the second party were directly under the control of the first party. In the absence of such pleadings in the claim statement this Tribunal is not inclined to determine the relationship of employer and employee by recording a finding as to whether the contract system is a mere camouflage. The second party's specific plea is that he was directly engaged by the first party but he has miserably failed to prove that contention.

10. There is no dispute that Kishore Mohan Parida died on 12-4-1996. The management has exhibited documents to show that soon after the death of Kishore Mohan Parida it served a notice on the second party (Ext. G) intimating that on the death of the Security Contractor the Security contract did no more subsist and no person engaged by the deceased contractor could be permitted into the plant premises. From Ext. G it transpires that the employment of the second party got disrupted consequent upon the death of Kishore Mohan Parida who is said to be the Security Contractor through which the second party was working in the premises of the Filling Plant.

Thus, with the evidence available on record, this Tribunal concludes that the second party was not an employee of the first party but he was engaged through a contractor to work under the principal employer.

11. *Issue Nos. (i) & (ii)*—If the second party was an employee of the first party the termination of his service with effect from the 24th April 1996 would have been illegal in as much as, as admitted by M.W. No. 1, the second party had worked in the plant premises from 1991 till the date of his termination of service. But, in view of the findings recorded on Issue No. 4, the termination of his service cannot be said to be either illegal or unjustified. Because, on the date of termination of service of the workman the contract ceased to subsist and the management rightly refused employment to the second party before serving the notice marked Ext. G consequently, the second party is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
26-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
26-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government